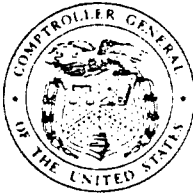


DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

60552

FILE: B-183537

DATE: February 23, 1976

MATTER OF: Kollsman Instrument Company

98571

DIGEST:

Since protested award of procurement pursuant to section 22(a) of Foreign Military Sales Act will not involve use of appropriated funds, matter is not subject to settlement by GAO and is dismissed.

This protest concerns a non-competitive award of 172 altimeters by the Department of the Air Force to Bendix Corporation under RFP F 34601-75-R-2513. The RFP sought offers for 406 altimeters; the protester, Kollsman Instrument Company, was informed that award for 172 of those altimeters was made to Bendix since the foreign governments ordering these altimeters had designated Bendix as the firm to supply the altimeters. Kollsman claims that the sole-source award of the 172 altimeters in question is improper since the Foreign Military Sales Agreements between the United States and the foreign governments do not contain any specific provision which requires that the AAU-19 altimeter be purchased on a sole-source basis from the Bendix Corporation.

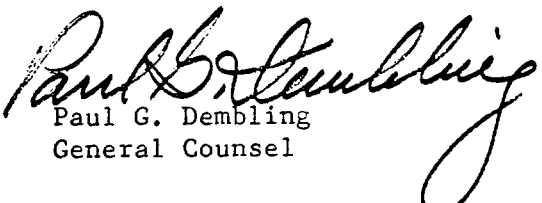
In Tele-Dynamics, B-183670, January 29, 1976 (55 Comp. Gen. ____), 76-1 CPD ____, we held that since a protested award under section 22 (a) of the Foreign Military Sales Act (FMSA) as amended, 22 U.S.C. 2762 (Supp. III, 1973) would not involve the use of appropriated funds we could not render an authoritative decision on the matter. In that case the transaction was based on a "dependable undertaking" pursuant to section 22(a) of the FMSA. The contract costs in such an arrangement are charged against the Navy's Foreign Military Sales Trust Fund, consisting of advance payments made by the foreign governments.

In the present instance we are advised that contract payments for the altimeters in question are made by direct citation to the Foreign Military Sales Trust Fund. In addition, according to the "dependable undertaking" agreement the foreign countries have agreed that sufficient funds will be made available in advance through the trust fund to cover payments, damages and

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other costs due under the contract. It is clear, then, that the award of the altimeters to Bendix will not involve payments from appropriated funds. Therefore, we are unable to render an authoritative decision. Tele-Dynamics, supra.

Accordingly, the protest is dismissed.


Paul G. Dembling
General Counsel